

## REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER  
(FOR AUDITOR):

000397

TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): Park and Recreation	3. DATE: 2/8/08	52 07/08
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4. SUBJECT: Maintenance Agreement with the California State Coastal Conservancy and the Los Penasquitos Lagoon Foundation for a Sediment Control Basin in Los Penasquitos Canyon

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Joshua Garcia, 533-6713, 804A	6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Jan-Nicole Edgell, 685-1361, 804A	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>
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## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST: The cost to maintain this sediment basin will vary annually, up to \$274,550. The costs of vegetation removal can be offset through the use of volunteers. The maintenance obligation may be incurred as early as FY09, and will be funded at that time from the FY09 General Services existing budget.
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	2/26/08	9	DEPUTY CHIEF	<i>[Signature]</i>	5/5/08
2	EAS (DSD)	<i>[Signature]</i>	3/3/08	10	COO	<i>[Signature]</i>	5/7/08
3	EOCP	<i>[Signature]</i>	3/6/08	11	CITY ATTORNEY	<i>[Signature]</i>	6/3/08
4	GENERAL SVCS (STREETS DIV.)	<i>[Signature]</i>	3/20/08		ORIG. DEPT	<i>[Signature]</i>	4/3/08
5	DOCKET LIAISON	<i>[Signature]</i>	3/28/08				
6	FINANCIAL MGMT	<i>[Signature]</i>	4/4/08				
	AUDITOR	<i>[Signature]</i>	4/25/08				
8	CFO	<i>[Signature]</i>	4/29/08				

DOCKET COORD: \_\_\_\_\_ COUNCIL LIAISON: *[Signature]*

COUNCIL PRESIDENT: *[Signature]* ☐ SPOB ☒ CONSENT ☐ ADOPTION

☐ REFER TO: \_\_\_\_\_ COUNCIL DATE: 6/24/08

11. PREPARATION OF: ☒ RESOLUTIONS ☒ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

1. Authorizing the Mayor to execute a Public Interest Agreement with the California State Coastal Conservancy and the Los Penasquitos Lagoon Foundation for the operation and maintenance of a sediment control basin in Los Penasquitos Canyon Preserve.
2. Authorizing the Mayor to execute an Agreement between the City of San Diego and the Los Penasquitos Lagoon Foundation to Implement Grant Requirements.

11A. STAFF RECOMMENDATIONS: 1. INTRODUCE THE ORDINANCE. 2. Approve the Resolution(s).

## 12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 1

COMMUNITY AREA(S): Los Penasquitos Canyon Preserve

ENVIRONMENTAL IMPACT: This activity is covered under project no. 47248, Los Penasquitos Lagoon Basin (Approved by The City of San Diego Hearing Officer on 4/12/06). The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Therefore, the activity is not a separate project for the purposes of CEQA review pursuant to State CEQA Guidelines Section 15060 § (c)(3)

TACHMENTS: Executive Summary Sheet, Agreement with Maintenance Plan.

HOUSING IMPACT: N/A

CITY CLERK INSTRUCTIONS: Once copies of resolutions are available, please contact Joshua Garcia 619-533-6713.  
Please note on the docket that the ordinance is a 6 vote item.

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: \_\_\_\_\_ REPORT NO: \_\_\_\_\_  
ATTENTION: Council President and City Council  
ORIGINATING DEPARTMENT: Park and Recreation  
SUBJECT: Agreement to Build and Maintain a Sediment Basin in Los  
Penasquitos Canyon Preserve  
COUNCIL DISTRICT(S): 1  
CONTACT/PHONE NUMBER: Chris Zirkle/619-533-6721 and Mario Sierra/619-525-8686

**REQUESTED ACTION:**

Authorize the Mayor or his designee to execute the attached agreements to facilitate construction and maintenance of a sediment control basin.

**STAFF RECOMMENDATION:**

Review and consider the Mitigated Negative Declaration then adopt the resolution and the ordinance authorizing the Mayor or his designee execute the agreements.

**EXECUTIVE SUMMARY:**

Sediment-laden storm water and urban runoff from large areas within the Penasquitos watershed are currently conveyed by Los Penasquitos Creek through the Los Penasquitos Canyon Preserve. The General Services Department is currently mandated to remove sediment deposited by the Los Penasquitos, Sorrento, and Carroll creeks at an existing sediment basin downstream of the confluence of these creeks. Absent this removal, the sediment would be deposited in Los Penasquitos Lagoon.

This project has been proposed by the Los Penasquitos Lagoon Foundation (LPLF) and the California Coastal Conservancy and would build a new sediment control basin in the Los Penasquitos Canyon Preserve. The proposed agreement with the LPLF and the Conservancy would require LPLF to build the sediment basin and the City to maintain it. Specifically, the agreement makes the LPLF responsible for permitting costs, construction costs, and the mitigation costs from existing and/or amended permits. The agreement makes the City liable for maintenance pursuant to the Maintenance Plan attached to the agreement. The LPLF has agreed to obtain appropriate bonds and insurance for the project. Required maintenance includes sediment removal, annual vegetation removal, trash removal, and maintenance and repair of structures (brow ditch and related appurtenances).

The LPLF has obtained grants from the Conservancy and the Regional Water Quality Control Board to cover its costs. The LPLF has secured all resource agency permits and approvals for the project. A City-issued grading permit is still required.

**FISCAL IMPACT**

The Engineering and Capital Projects (ECP) Department has prepared a cost estimate for implementation of the Maintenance Plan. The estimated annual maintenance cost (to be borne by the General Services Department, Streets Division, Fund 100, Department 534) will vary, up to \$274,550. The project has the potential to reduce the current cost of removing the sedimentation

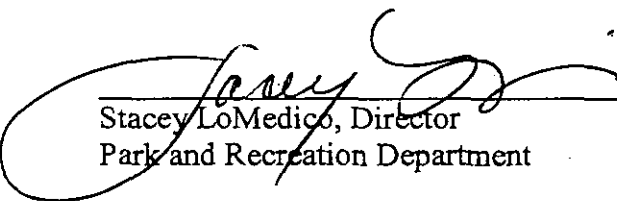
from the existing, downstream basin in Sorrento Creek. The Park and Recreation Department would be required to annually remove vegetation from the new basin. The ECP estimate puts the cost of annual vegetation removal at \$20,000; however, it is envisioned this cost can be offset by volunteer efforts.

Staff supports the agreement as provided in that it allows for mission flexibility, does not increase City permitting requirements or responsibilities, and the new sedimentation basin has potential downstream environmental benefits for the City.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: As the project sponsor, the LPLF has conducted outreach to interested stakeholder groups.

STAKEHOLDERS AND PROJECTED IMPACTS: The State Coastal Conservancy and California State Parks Department are supportive of this project and expect positive impacts as a result.



Stacey LoMedico, Director  
Park and Recreation Department



Elmer L. Heap  
Deputy Chief of Community Services

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A MAINTENANCE AGREEMENT WITH THE CALIFORNIA STATE COASTAL CONSERVANCY AND THE LOS PENASQUITOS LAGOON FOUNDATION.

WHEREAS, the Los Penasquitos Lagoon Foundation has received a grant from the California Coastal Conservancy [Conservancy] and the Regional Water Quality Control Board for the construction of a sediment basin in Los Penasquitos Canyon Preserve, and

WHEREAS, the Conservancy is required, pursuant to Public Resources Code section 31116(c) to obtain an agreement sufficient to protect the public interest in any improvement or development constructed with a grant from the Conservancy; and

WHEREAS, the Conservancy desires to ensure that proper maintenance of the basin will occur, thereby ensuring that the basin's purpose is realized, and

WHEREAS, the City of San Diego is already obligated to remove sediment deposited by the Los Penasquitos, Sorrento, and Carroll creeks at an existing sediment basin downstream from the confluence of these creeks, and

WHEREAS, the construction of a sediment basin in the Los Penasquitos Canyon Preserve has the potential to reduce the current cost of removing the sedimentation from the existing downstream basin in Sorrento Creek, NOW  
THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor is hereby authorized and empowered to execute, for and on behalf of said City, an Agreement with the California State Coastal Conservancy and the Los Penasquitos Foundation for the operation and maintenance of a sediment control basin in Los Penasquitos Canyon, under the terms and conditions set forth in the Agreement, on file in the office of the City Clerk as Document No. OO-\_\_\_\_\_.

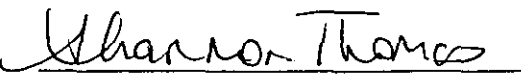
Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

Section 4. That this activity is covered under the Los Penasquitos Lagoon Mitigated Negative Declaration, dated April 12, 2006. That this activity is adequately addressed in the environmental document and that there is no change in circumstance, additional information, or project changes to warrant additional review. Therefore, this activity is not a separate project for purposes of California Environmental Quality Act [CEQA] review pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Shannon Thomas  
Deputy City Attorney

ST:sc  
11/20/07  
06/03/08 Cor. Copy  
Aud.Cert.:N/A  
Or.Dept:Park&Rec  
O-2008-75

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION AUTHORIZING AN AGREEMENT WITH  
THE LOS PENASQUITOS LAGOON FOUNDATION FOR THE  
CONSTRUCTION OF A SEDIMENT CONTROL BASIN IN  
LOS PENASQUITOS CANYON.

WHEREAS, the Los Penasquitos Lagoon Foundation has secured grants from the California Coastal Conservancy and the Regional Water Quality Control Board for the construction of a sediment control basin in the Los Penasquitos Canyon Preserve, and

WHEREAS, the construction of the sediment control basin has the potential to reduce the City's current cost of removing the sedimentation from the existing, downstream basin in Sorrento Creek, now therefore,

BE IT RESOLVED, that the Mayor is authorized to execute an agreement between the City of San Diego and the Los Penasquitos Foundation specifying the terms for the construction of a sediment basin by the Los Penasquitos Lagoon Foundation in the Los Penasquitos Canyon Preserve, under the terms set forth in the Agreement, on file in the Office of the City Clerk as document No. RR-\_\_\_\_\_.

BE IT FURTHER RESOLVED, that this activity is covered under Project No. 47248, Los Penasquitos Lagoon Basin. That this activity is adequately addressed in the environmental document and that there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Therefore, this activity is not a project for the purposes of California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon Thomas  
Shannon Thomas  
Deputy City Attorney

ST:sc  
06/03/08  
Aud.Cert.N/A  
Or.Dept:Park & Rec  
R-2008-1091

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor



**AGREEMENT BETWEEN THE  
CITY OF SAN DIEGO AND THE  
LOS PENASQUITOS LAGOON FOUNDATION  
TO IMPLEMENT GRANT REQUIREMENTS**

This Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and the Los Penasquitos Lagoon Foundation [Foundation], a non-profit corporation organized under the laws of the State of California [collectively, Parties], for the Foundation to construct the Los Penasquitos Sediment Basin [Project] in the Los Penasquitos Canyon Preserve, City of San Diego, California [the Project Site] and for the City to maintain the Project.

**RECITALS**

The Foundation has received a grant from the State and the State Coastal Conservancy [Coastal Conservancy] for the construction, monitoring, and maintenance of a sediment basin in the Los Penasquitos Canyon Preserve, City of San Diego, designed to protect the Los Penasquitos Lagoon from sediment input from the watershed.

The City of San Diego issued Site Development Permit No. 151258/Coastal Development Permit No. 291354 and approved a Mitigated Negative Declaration for the Project on April 12, 2006.

As a condition of receiving their grant funds, the Coastal Conservancy required City and Foundation to execute a Public Interest Agreement pursuant to Public Resources Code section 31116(c), which was approved by City Council on \_\_\_\_\_, 2008, as document number O-\_\_\_\_\_.

Exhibit B of the Public Interest Agreement details the obligations between the Foundation and the City for the construction and on-going maintenance of the Project [Maintenance Plan].

In order to fulfill the Foundation's obligations pursuant to the Maintenance Plan, the Foundation will be entering into agreements with consultants and contractors to perform certain activities on City of San Diego property and will therefore require the City's permission to enter for those limited purposes.

The City is willing to allow the Foundation, its consultants, contractors, and volunteers access to the Project Site to perform construction of the basin and the Foundation's obligations pursuant to the Maintenance Plan, contingent on Foundation's willingness to agree to certain provisions regarding indemnification, insurance, and bonds in order to ensure the successful completion of the Project and to protect the City's interest.

In consideration of the above recitals, and the mutual covenants and conditions set forth

herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

## **ARTICLE I DURATION**

The above-listed recitals are true and correct and are hereby incorporated by reference.

1. **Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective for until completion of all the obligations and duties contained herein, approximately December 31, 2032.

## **ARTICLE II CITY OBLIGATIONS**

2.1 **Scope of City Maintenance.** The City will provide maintenance of the Project as set forth in the separately approved, above referenced Maintenance Plan.

2.2 **Right of Entry.** City will allow, upon proof by the Foundation of compliance with the terms of this Agreement, entry to the Project Site by the Foundation, its consultants, contractors, and volunteers for work as set forth in the Maintenance Plan.

## **ARTICLE III FOUNDATION OBLIGATIONS**

3.1 **Resource Agency Reviews.** Foundation shall be responsible for submittal of all applications, fees, and necessary documentation to United States Department of Fish and Wildlife, California Department of Fish and Game, Army Corp of Engineers, Regional Water Quality Control Board ("Agencies"), and others as triggered by CEQA or any other resource agency review.

3.2 **Permits.** Foundation recognizes and understands that it must be the sole party named on all Agency permits for any construction and maintenance, and that City will not be responsible for, or a surety for, any of Foundation's permit conditions, responsibilities, or requirements to the extent they exceed the City's obligations pursuant to the Maintenance Plan; Foundation will provide City with a copy of all Agency Permit requirements and applications. City reserves its right, upon review of Agency Permit requirements, to terminate this Agreement if the City is named or incurs an obligation of any nature in an Agency permit. City shall complete only those services which, in its sole opinion, are necessary for the orderly filing of necessary documents and closing of Project. Foundation shall bear all costs associated with said Permits for this Project and

be solely responsible for any Agency consequences of the construction of the Project being incomplete.

**3.3 Pre-Construction Documentation.** Foundation shall submit all necessary information to the City for issuance of a Right of Entry Permit for construction or other Project requirements. Foundation shall provide the City a copy of the traffic control plans, traffic permit, and trail use plan. Foundation shall provide to City, for its sole approval for completeness, all necessary approved permits as required to legally begin construction. The current contact for this purpose is Steve Haupt, City of San Diego Park & Recreation Department, Mail Station 804A, 1650 A Street, San Diego, CA 92101.

**3.4 Construction.** Foundation shall be responsible for construction Health and Safety Plans and proper execution of said plans. Foundation shall provide for a staging area and fencing as necessary to perform the work, protect equipment and materials; and the public. Foundation shall coordinate with City Survey Crew for Field Staking by City; coordinate Best Management Practices [BMPs] as set forth in the San Diego Municipal Code Chapter 4, Article 3, Division 3; comply with all permit conditions; coordinate and manage the construction per City approved plans; coordinate inspection of grading with Geotechnical Engineer; coordinate Quality Assurance inspections with City; call Dig Alert if called for underground utility stake out; and notify City upon completing the work.

**3.5 Work.** The Project shall be completed in accordance with the Standard Specifications for Public Works Construction, 2003 Edition, including regional and City of San Diego Supplement Amendments. Foundation shall ensure that work complies with the City of San Diego Regional Standard drawings 7-21-04.

**3.6 Project Close-out.** Foundation shall complete all terms and conditions, reports, etc. to comply with state grant provisions, including paperwork and audit information to the state to be released of the state grant obligations.

**3.7 Inspection and Monitoring.** Foundation shall perform all monitoring as required in the grant, Agency Permits, or other associated requirements, conditions or responsibilities as determined in the pre-construction phase. Foundation recognizes that City will not be a surety to Foundation compliance.

#### **ARTICLE IV RIGHT OF ENTRY, INDEMNIFICATION, LIMITATION OF LIABILITY AND BONDS**

**4.1 Right of Entry.** During the term of this Agreement the City grants permission to the Foundation, their contractors, consultants, volunteers, and designated agents to enter upon the Project Site under the terms and conditions contained in this Agreement. This Right of Entry does not grant permission to begin construction. Construction can only begin after a Notice to Proceed is issued by Park and Recreation Department.

**4.1.1 Limited Purpose.** Foundation or its agents' non-exclusive use of the Project Site shall be limited to those purposes which are delineated in the Maintenance Plan.

**4.1.2 Fees.** Consideration to City for granting a right of entry permit is typically a \$360 non-refundable processing fee and a monthly permit fee commencing on the effective date hereof. These fees are hereby waived for this Project.

**4.1.3 Volunteers.** Community volunteers assisting at the Project Site shall sign up as volunteers with the Park and Recreation Department prior to commencing the Foundation activities and other project related work.

**4.1.4 Non-Discrimination.** Foundation and its agents agree not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, ethnicity, age, marital status, physical disability, or any other form of unlawful discrimination in Foundation's use of the Project Site, including but not limited to providing goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

**4.1.5 Assumption of Risk.** All risks in connection with Foundation's use of the Project Site and any damages shall be borne in full by Foundation. The Foundation does not assume any risks in connection with the City's performance of the City's maintenance obligations.

**4.1.6 Repair or Replacement of Improvements.** Foundation shall be solely responsible for the repair or replacement of any improvements damaged during the course of the Foundation Activities. This shall include, but not be limited to, paving, fencing, sewer or stormwater systems, electrical systems, irrigation, and trails. Foundation shall not be responsible for the repair or replacement of improvements damaged during the course of the City's maintenance activities.

**4.1.7 Revocation.** This Right of Entry is revocable at any time by the City of San Diego. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Foundation as a result of termination of the Right of Entry, and, further, that Foundation expressly waives any claim for expense or loss which Foundation might incur as a result of termination of this Right of Entry.

**4.1.8 Effect of Revocation on Other Licenses or Permits.** The revocation of this Right of Entry shall have no effect on any other license or permit which has previously been granted to Foundation or its agents by the City.

**4.1.9 Compliance with Laws.** Foundation and its agents shall, at their sole cost and expense, comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Project Site and the Foundation Activities pursuant to the Maintenance Plan. The Foundation shall not be responsible for the compliance of the City.

**4.1.10 Assignments Prohibited.** The assignment of any rights or duties of the Foundation shall be limited to and in accordance with the Public Interest Agreement. Neither Party may assign the obligations or benefits under this Agreement, whether by express assignment or otherwise, nor any monies due or to become due hereunder, without the prior written consent of the other Party.

**4.1.11 Activities at the Project Site.** Foundation shall prohibit its contractors, subcontractors, consultants and particularly construction contractors, including but not limited to grading contractor, from engaging in construction or maintenance activities at the Project Site before 7:00 a.m. and after 4:00 p.m. on weekdays. Further, no construction activities shall take place on weekends or holidays, or during any time which would violate any of the provisions of permits issued by any Regulating Agencies.

**4.1.12 Signs Prohibited.** No signs shall be displayed on the Project Site without the prior written consent of the Park and Recreation Department Director or designee, except for those signs which are necessary to identify the Project and its purpose, to protect the public safety, or to preserve the integrity of the Project and the Foundation Activities.

**4.1.13 Maintenance of Project Site.** Maintenance of the Project Site during construction activities affected by work in connection with the Foundation Activities shall be the sole responsibility of Foundation. Foundation shall be solely responsible for the maintenance and cleanup of the Project Site immediately following each day's work.

**4.1.14 Vehicular Traffic.** Foundation shall limit vehicular traffic to the project footprint as delineated on the approved grading plans. The Foundation shall not operate vehicular traffic within the project footprint during wet/rainy conditions without permission from City Park and Recreation Department. The Foundation shall obtain traffic control permits when performing work in the public right of way.

**4.1.15 Completion of Foundation Activities.** At the completion of the Foundation Activities in connection with the Project, Foundation shall be responsible for returning the Project Site to its original condition (excluding those changes to the Project Site which were contemplated within the scope of the Foundation Activities) subject to the satisfaction of the City of San Diego Park and Recreation Department, Open Space Division representatives and other applicable City Department representatives.

**4.1.16 Public Safety.** At all times during the performance of the Foundation Activities, Foundation shall be responsible for providing security and public safety for the Project Site. Foundation is not responsible for insuring the public safety against the acts of third parties (excluding Foundation's agents, invitees, guests, volunteers, contractors, subcontractors, consultants, and subconsultants) or against acts of God.

**4.1.17 Contractors, Subcontractors and Prevailing Wage.** Foundation shall provide a list of all contractors and subcontractors for the Project to City Project Manager including name, address, phone, email, fax and phone number. All work shall be done by

contractors licensed within the State of California, if applicable. Foundation shall also make sure that all Contractors, Subcontractors, and Consultants pay Prevailing Wage as determined by California State law.

**4.1.18 Compliance with Clean Water Act.** Foundation shall comply with the Clean Water Act and prevent debris from entering into the existing storm drain systems during Project construction and other Foundation activities. During Foundation activities, the Foundation shall 1) use dry clean-up methods for spills and outdoor cleaning, 2) properly label, store and dispose of hazardous wastes, and 3) locate the nearest storm drains and take measures to ensure that Project debris will not enter or be discharged into them. The Foundation shall not be responsible for City's compliance with the Clean Water Act.

**4.1.19 Notice.** Prior to entering the Project Site, Foundation will provide 72 hours notice to the Los Penasquitos Ranger at (858) 538-8066, or to such other person as shall be designated by the City in writing.

**4.2. Indemnification by Foundation.** Foundation agrees to defend, indemnify, protect, and hold City, its agents, officers, and employees, harmless from and against all claims asserted or liability established for damages or injuries to any person or property, including to Foundation's employees, invitees, guests, agents, or officers, or judgments arising directly or indirectly out of obligations, work or services herein undertaken, which arise from, are connected with, or are caused or claimed to be caused by the acts or omissions of Foundation, its employees, invitees, guests, agents, or officers. Foundation further agrees that the duty to defend includes attorneys' fees and all costs associated with enforcement of this indemnification provision, defense of any claims arising from this Agreement; and, where a conflict of interest exists, or may exist between Foundation and the City, the reasonable value of attorneys fees and all costs if the City chooses, at its own election, to conduct its own defense or participate in its own defense of any claim related to this Agreement. Foundation's duty to indemnify and hold harmless shall not include any claims or liability arising from the sole negligence, or willful misconduct of the City, its agents, officers, or employees.

**4.2.1 Indemnification by Foundation's Construction Contractors.** In its agreements with construction contractors, Foundation will include the following indemnity language:

Contractor agrees to defend, indemnify, protect and hold the City of San Diego, its agents, officers and employees, harmless from and against all claims asserted, or liability established for damages or injuries to any person or property including to Contractor's employees, agents or officers, or judgments arising directly or indirectly out of obligations, work or services herein undertaken, which arise from, are connected with, are caused or claimed to be caused by the acts or omissions of the Contractor, its agents, officers and employees. Contractor further agrees that the duty to defend includes attorneys fees and all costs associated with enforcement of this indemnification provision, defense of any claims arising from this Project; and, where a conflict of interest exists, or may exist between Contractor and the City of San Diego, the reasonable value of attorneys fees and all costs if the city chooses, at its own election, to conduct its own

defense or participate in its own defense of any claim related to this Project. The Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the sole negligence, or willful misconduct of the City of San Diego, its agents, officers or employees.

**4.2.2 Indemnification by Foundation's Design Professional Consultants.** In its agreements with design professional consultants, Foundation will include the following indemnity language:

To the fullest extent of the law with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

The Design Professional agrees to pay any and all costs the City of San Diego incurs enforcing the indemnity and defense provisions.

**4.2.3 Indemnification by Foundation's Other Consultants.** In its agreements with other consultants, Foundation will include the following indemnity language:

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or the Consultant's employees, agents, and officers, arising out of any services performed involving this Project, the Consultant agrees to defend, indemnify, protect, and hold harmless the City of San Diego, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City of San Diego, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City of San Diego, its agents, officers, or employees.

The Consultant agrees to pay any and all costs the City of San Diego incurs enforcing the indemnity and defense provisions.

**4.3 Bonds.** In all construction contracts, Foundation will require the following bonds:

**4.3.1 Payment Bond.** A Payment Bond (Materials and Labor Bond) for not less than a hundred percent (100%) of the contract price, to satisfy claims of material suppliers and of mechanics and laborers employed on the work. The bond shall be maintained by the Contractor in full force and effect until the work is accepted by the Foundation and City and until all claims for materials and labor are paid.

**4.3.2 Faithful Performance Bond.** A Faithful Performance Bond for one hundred percent (100%) of the contract price to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the Foundation and City of San Diego, and that all materials and workmanship will be free from original or developed defects.

**4.4 Third Party Beneficiary.** In all of its agreements, including, construction contractors, design professionals, and non-design professionals, Foundation will include the following language:

The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and construction, the City of San Diego will become the owner of the project improvements, and the City of San Diego shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.

## ARTICLE V MEDIATION

**5.1 Mandatory Non-binding Mediation.** If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

**5.2 Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party introducing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

**5.3 Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in soil ecology and hydrological engineering processes, if possible, and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation," along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

**5.3.1** If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a



preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a single Mediator.

**5.3.2** The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

**5.3.3** If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be agreed upon.

**5.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

**5.4.1** Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

**5.4.2** Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

## **ARTICLE VI INSURANCE**

**6.1 Required Policies.** At all times during the term of this Agreement, Foundation shall maintain, and shall require its consultants and contractors to maintain, insurance coverage in accordance with sections 6.1.1 - 6.1.4.12.

**6.1.1 Insurance Required for Foundation.** Foundation shall obtain and provide insurance certificates reflecting evidence of all insurance required in this section. Foundation's liabilities, including but not limited to Foundation's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide for thirty (30) days' prior written notification to the City (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal

of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Foundation's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by City.

Further, Foundation shall not modify any policy or endorsement thereto which increases exposure to loss for the duration of this Agreement.

**6.1.1.1 Commercial General Liability.** Foundation shall keep in full force and effect Commercial General Liability (CGL) Insurance written on an occurrence basis which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**6.1.1.2 Commercial Automobile Liability.** For all automobiles including owned, hired and non-owned automobiles, Foundation shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto].

**6.1.1.3 Workers' Compensation.** For all of the employees of Foundation who are subject to this Agreement and to the extent required by applicable state or federal law, Foundation shall keep in full force and effect, a Workers' Compensation Insurance policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and Foundation shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

**6.1.1.4 Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers (LESLI list).

**6.1.1.5 Deductibles.** All deductibles on any policy shall be the responsibility of Foundation and shall be disclosed to the City at the time the evidence of insurance is provided.

**6.1.1.6 Specific Provisions Required.** Each policy required hereunder shall expressly provide, and an endorsement shall be submitted to the City, that:

Except as to the Workers' Compensation Insurance policy, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insured. The City's Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City. The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

**6.1.1.7 Certificates of Insurance.** Before performing any Foundation Activities, Foundation shall provide the City with all Certificates of Insurance accompanied with all endorsements. Said certificates of insurance and endorsements shall be filed with the Park and Recreation Department, Open Space Division.

**6.1.1.8 Additional Insurance.** Foundation and its contractors may obtain additional insurance not required by this Agreement.

**6.2 Insurance Required from Professional Design Consultants.** In its agreement with any professional design consultants, Foundation shall include the following insurance requirements:

The Consultant shall not begin the Professional Services under this Agreement until it has obtained and provided insurance certificates reflecting evidence of all insurance required in this section. Consultant's liabilities, including but not limited to Consultant's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide for thirty (30) days' prior written notification (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract.

Further, the Consultant shall not modify any policy or endorsement thereto which increases Foundation's or the City of San Diego's exposure to loss for the duration of this Agreement.

**6.2.1 Commercial General Liability.** The Consultant shall keep in full force and effect Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1,000,000 per occurrence and subject to an annual aggregate of \$2,000,000. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**6.2.2 Commercial Automobile Liability.** For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full

force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1,000,000 per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto].

**6.2.3 Architects & Engineers Professional Liability.** For all of the Consultant's employees who are subject to this Agreement, the Consultant shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of \$1,000,000 million per claim and \$1,000,000 million annual aggregate. The Consultant shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Project; and (2) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City of San Diego's exposure to loss. All defense costs shall be outside the limits of the policy.

**6.2.4 Workers' Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by applicable state or federal law, the Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1,000,000 of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.

**6.2.5 Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. Insurance provided by non-admitted, "surplus lines" carriers will be accepted only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers (LESLI list).

**6.2.6 Deductibles.** All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed at the time the evidence of insurance is provided.

**6.2.7 Specific Provisions Required.** Each policy required under Sections 6.2.1 through 6.2.4 shall expressly provide, and an endorsement shall be submitted to the City, that:

Except as to Architects and Engineers Professional Liability and Workers' Compensation Insurance policies, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insured. The City of San Diego's Additional Insured status must be reflected on additional insured endorsement form CG 20 10 11 85, or equivalent, which shall be submitted to the City of San Diego. The policies are primary and non-contributory to any insurance that may be carried by the City of San Diego, as reflected in an endorsement which shall be submitted to the City of San Diego.

**6.2.8 Additional Insurance.** The Consultant may obtain additional insurance not required by this Agreement.

**6.3 Insurance Required from Other Consultants.**

In its agreement with any consultants who are not design professionals, Foundation shall include the following insurance requirements:

The Consultant shall not begin the Professional Services under this Agreement until it has obtained and provided insurance certificates reflecting evidence of all insurance required in this section. Consultant's liabilities, including but not limited to Consultant's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide for thirty (30) days' prior written notification (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract.

Further, the Consultant shall not modify any policy or endorsement thereto which increases Foundation's or the City's exposure to loss for the duration of this Agreement.

**6.3.1 Commercial General Liability.** Consultant shall keep in full force and effect Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1,000,000 per occurrence and subject to an annual aggregate of \$2,000,000. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**6.3.2 Commercial Automobile Liability.** For all of the Consultant's automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1,000,000 per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto].

**6.3.3 Workers' Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by applicable state or federal law, the Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1,000,000 of employers' liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

**6.3.4 Insurer Requirements.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. Insurance provided by non-admitted, "surplus lines" carriers will be accepted only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers (LESLI list).

**6.3.5 Deductibles.** All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed at the time the evidence of insurance is provided.

**6.3.6 Specific Provisions Required.** Each policy required under Sections 6.3.1 through 6.3.3 shall expressly provide, and an endorsement shall be submitted to the City, that:

Except as to the Workers' Compensation Insurance policy, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insured. The City's Additional Insured status must be reflected on additional insured endorsement form CG 20 10 11 85, or equivalent, which shall be submitted to the City. The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

**6.3.7 Additional Insurance.** The Consultant may obtain additional insurance not required by this Agreement.

**6.4 Insurance Coverages Required for Construction Contractors.** In its agreement with any construction contractors, Foundation shall include the following insurance requirements:

Contractor shall, at its sole cost and expense, procure insurance against claims for loss including injuries to persons or damage to property, which may arise out of or in connection with the performance of the Work hereunder by the Contractor, Contractor's agents, representatives, officers, employees or subcontractors. Contractor shall maintain this insurance for the duration of this Contract and at all times thereafter when the Contractor is correcting, removing, or replacing Work in accordance with this Contract. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract shall not be deemed limited in any way to the insurance coverage required herein. Payment for insurance shall be included in the various items of Work, and except as specifically agreed in writing, Contractor shall not be entitled to any additional payment. Contractor shall not begin any work under this Contract until it has provided all required insurance. Except as provided for under California law, all policies of insurance required hereunder must provide for thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Contract and Contractor's failure to maintain or renew coverage or to provide

evidence of renewal during the term of this Contract may be treated as a material breach of contract.

**6.4.1 Commercial General Liability Policy.** Contractor shall provide at its expense a policy or policies of Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Contractor shall maintain the same or equivalent CGL Insurance as described herein for at least 10 years following substantial completion of the work. All costs of defense shall be outside the policy limits. Policy coverage shall be in liability limits of not less than the following:

**Limits of Liability**

General Annual Aggregate Limit	
(Other than Products/Completed Operations) □ \$2,000,000	
Products/Completed Operations Aggregate Limit	\$1,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

**6.4.2 Commercial Automobile Liability Insurance.** Contractor shall provide at its expense a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of \$1,000,000 combined single limit per accident, covering bodily injury and property damage for owned, non-owned and hired automobiles ("Any Auto"). All cost of defense shall be outside the limits of the policy.

**6.4.3 Workers' Compensation and Employers' Liability Insurance.** In accordance with the provisions of Section 3700 of the California Labor Code, Contractor shall provide at its expense Workers' Compensation Insurance and Employers' Liability Insurance to protect the Contractor against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Contractor to comply with the requirements of this section. Limits for this insurance shall be not less than the following:

Worker's Compensation	Statutory

Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee
Bodily Injury by Disease	\$1,000,000 policy limit

Before execution of the Contract, the Contractor shall file the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work under this Contract."

#### **6.4.4 Rating Requirements.**

Except for the State Compensation Insurance Fund, all insurance required by this Contract as described herein shall be carried only by responsible insurance companies with a rating of, or equivalent to, at least "A-, VI" by A.M. Best Company, and that are authorized by the California Insurance Commissioner to do business in the State of California.

#### **6.4.5 Non-Admitted Carriers.**

Insurance provided by non-admitted, "surplus lines" carriers will be accepted only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list).

All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

**6.4.6 Evidence of Insurance.** The Contractor shall furnish documents including but not limited to certificates of insurance and endorsements evidencing the insurance required herein, and shall finish renewal documentation prior to expiration of this insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all insurance policies required herein.

#### **6.4.7 Commercial General Liability Policy Endorsements.**

**6.4.7.1 Additional Insured.** The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The Coverage for Projects shall include liability arising out of: (a) Ongoing operations performed by you or on your behalf, (b) Your products, or (c) premises owned, leased, controlled, or used by you.

**6.4.7.2 Primary and Non-Contributory.** The policy or policies must be endorsed to provide that the insurance afforded by the CGL policy or policies is primary to any insurance or self insurance of the City of San Diego and its elected officials, officers,



employees, agents and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

**6.4.7.3 Project General Aggregate Limit.** The policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the Work performed under this Contract. Claims payments not arising from the Work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.

**6.4.8 Commercial Automobile Liability Insurance Endorsements.**

**6.4.8.1 Additional Insured.** Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor, *Except* that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

**6.4.9 Workers' Compensation and Employers' Liability Insurance Endorsements**

**6.4.9.1 Waiver of Subrogation.** The policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City, and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of the policy or policies and which arise from work performed by the Named Insured for the City.

**6.4.10 Deductibles and Self Insured Retentions.**

Contractor shall be responsible for the payment of all deductibles and self-insured retentions which must be disclosed at the time the evidence of insurance is provided.

**6.4.11 Notice of Changes to Insurance Coverage.**

Contractor shall provide 30 days' prior notification of any material change to the policies or insurance provided under this Contract.

**6.4.12 Excess Coverage.**

All policies providing excess coverage shall follow the form of the primary policy or policies including but not limited to all endorsements.

## ARTICLE VII MISCELLANEOUS

**7.1 Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notices shall be addressed to:

To City:

Park and Recreation Department  
202 "C" Street  
San Diego, CA 92101  
(619)

To Foundation:

Joan Jackson, Chairperson  
Los Penasquitos Lagoon Foundation  
P.O. Box 940  
Cardiff, CA 92007  
(760) 729-3261

**7.2 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

**7.3 Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or Foundation, shall be deemed to be both covenants and conditions.

**7.4 Jurisdiction, Venue, and Attorney Fees.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

**7.5 Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

**7.6 Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters

covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

**7.7 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

**7.8 No Waiver.** No failure of either the City or Foundation to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

**7.9 Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

**7.10 Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

**7.11 Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

**7.12 Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

**7.13 Conflicts Between Terms.** If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**7.14 Public Records.** The City is a public agency subject to the California Public Records Act. Upon request, Foundation must produce all records relating to the Project. Therefore, Foundation must anticipate that this Agreement and any documents provided by the City to Foundation or generated by Foundation which relate to the Project cannot be kept confidential.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor pursuant to Ordinance No. O-\_\_\_\_\_, authorizing such execution, and by the Los Penasquitos Lagoon Foundation.

CITY OF SAN DIEGO

LOS PENASQUITOS LAGOON  
FOUNDATION

By: \_\_\_\_\_

By: *Joan Jackson*

Title: \_\_\_\_\_

Title: 5-30-08

Date: \_\_\_\_\_

Date: *Chavez*

I HEREBY APPROVE the form and legality of this foregoing Agreement this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

MICHAEL J. AGUIRRE, City Attorney

\_\_\_\_\_  
Deputy City Attorney

000427

**Recording Requested By and  
When Recorded Return to:**

State Coastal Conservancy  
1330 Broadway, Suite 1300  
Oakland, CA 94612

Attn: Legal Counsel: JG

**EXEMPT FROM RECORDING FEES -- GOVERNMENT CODE SECTION 6103**

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**AGREEMENT PROTECTING THE PUBLIC INTEREST  
IN CERTAIN IMPROVEMENTS**

This agreement is entered into by the California State Coastal Conservancy, ("the Conservancy"), a state agency, Los Peñasquitos Lagoon Foundation, ("the nonprofit organization"), a California nonprofit corporation and the City of San Diego ("the City"), a municipal corporation. The purposes of this agreement are: (1) to protect the public interest in construction of improvements accomplished with Conservancy funds, as required by California Public Resources Code § 31116(c), and (2) to assure continued access to and maintenance of the improvements to protect the public interest therein.

**PERTINENT FACTS**

- A. California Public Resources Code §§ 31116 authorizes the Conservancy to award grants to nonprofit organizations for the purposes of Division 21 of the Public Resources Code.
- B. The nonprofit organization is a California nonprofit organization exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code whose purposes are consistent with Division 21
- C. The City owns certain real property ("the property"), located in the coastal zone in San Diego County, California and described in Exhibit A, which is incorporated by reference and attached.
- D. On July 16, 2007, the Conservancy authorized a grant to the nonprofit organization, subsequently awarded under Grant Agreement No. 07-023 to construct a sediment basin in the City of San Diego to provide system-wide reductions to impacts in water quality, riparian habitat and salt marsh habitats within the Los Peñasquitos lagoon environs.

**PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))**  
**Los Peñasquitos Lagoon Sediment Basin**

- E. Public Resources Code § 31116(c) requires that the Conservancy execute an agreement sufficient to protect the public interest in any improvements or development constructed under its grant; this agreement must be recorded in the county in which the real property is located.
- F. The grant referred to above was conditioned on the nonprofit organization, the City, and the Conservancy executing and recording an agreement to protect the public interest in all improvements or developments constructed with Conservancy funds, as required by Public Resources Code § 31116(c).
- G. The nonprofit organization will provide for the planning, design and construction of the sediment basin.
- H. The City has agreed to provide adequate services to maintain the sediment basin so it continues to function efficiently.

**THE NONPROFIT ORGANIZATION, THE CITY AND THE CONSERVANCY AGREE AS FOLLOWS**, in order to carry out the purposes of Public Resources Code § 31116(c), and in light of the Pertinent Facts, above:

1. **DURATION.** The term of this agreement shall be for the reasonable lifetime of the improvements made with Conservancy funds, but in no event less than twenty-three years from the date of completion of construction.
2. **EMERGENCY RESTRICTIONS.** The City may, subject to its agreement with the nonprofit organization, restrict or deny access to the property if an emergency exists which threatens public health and safety or the natural resources of the property. In that event, all reasonable measures shall be taken to remedy the emergency conditions and restore the right of access.
3. **CONSTRUCTION AND MAINTENANCE.** The nonprofit organization assumes all responsibility for constructing the sediment basin. During the term of this agreement, the nonprofit organization and City shall maintain and operate the property and access improvements as agreed in the Los Peñasquitos Lagoon Sediment Basin Monitoring and Maintenance Plan, attached as Exhibit B, and as it may be amended by the parties to this agreement.
4. **IMPLEMENTATION.** The nonprofit organization shall implement site improvements on the property in accordance with Grant Agreement No. 07-023, including, without limitation, construction of a sediment basin along Los Peñasquitos Creek.
5. **COVENANTS RUNNING WITH THE LAND.** The obligations of this agreement are agreed to be covenants running with the land within the meaning of California Civil Code § 1468. The covenants shall run with the property and be binding upon and inure to the benefit of the

**PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))**  
**Los Penasquitos Lagoon Sediment Basin**

nonprofit organization, its assigns and successors in interest, and the people of the State of California.

6. **ACCESS BY THE NONPROFIT ORGANIZATION.** The nonprofit organization shall have access to the property to accomplish the purposes of this agreement.
7. **INSPECTION.** The nonprofit organization and the City shall permit the Conservancy, its agents or employees, to visit the project site at reasonable intervals to determine whether the project is implemented and maintained in accordance with this agreement.
8. **THE CITY'S USE OF THE PROPERTY.** The City reserves the right to use the property in any manner, provided that its use does not unreasonably interfere with the nonprofit organization's rights under this agreement.
9. **LIABILITY.** The nonprofit organization and the City shall be responsible for, indemnify and save harmless the Conservancy, its officers, agents, and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to the property and improvements on it, except for active negligence of the Conservancy, its officers, agents or employees. The duty to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. The nonprofit organization and the City waive any and all rights to any type of express or implied indemnity or right of contribution from the Conservancy, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to the property and improvements on it.
10. **SUCCESSORS TO THE NONPROFIT ORGANIZATION.** If, for any reason, including, but not limited to the dissolution and winding up of the nonprofit organization, the nonprofit organization is unwilling or unable to meet its obligations under this agreement, the Executive Officer of the Conservancy shall have the right to designate a public entity or nonprofit corporation to assume the responsibilities of the nonprofit organization under this agreement. The Executive Officer of the Conservancy shall obtain the City's consent to assignment from the contact indicated in paragraph 14, provided the City's concurrence on the public entity or nonprofit organization to succeed the Foundation shall not be unreasonably withheld or delayed.
11. **SUCCESSORS IN INTEREST.** The terms of this agreement shall be binding on all successors and assigns of the parties to this agreement.
12. **FORBEARANCE NOT A WAIVER.** Any forbearance on the part of the Conservancy, or its successor in interest, to enforce the terms and provisions of this agreement in the event of a breach shall not be deemed a waiver of the Conservancy's right regarding any subsequent violation or breach.

**PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))**  
**Los Penasquitos Lagoon Sediment Basin**

13. **SEVERABILITY.** If any of the provisions of this agreement are found by a court of law to be of no force or effect, the validity of all other provisions shall be unaffected.
14. **NOTICES.** Notices issued pursuant to this agreement shall be sent to the following addresses (or to a subsequent address of which notice has been provided in writing):

Executive Officer  
 State Coastal Conservancy  
 1330 Broadway, Suite 1300  
 Oakland, CA 94612

Executive Director  
 Los Penasquitos Lagoon Foundation  
 P.O. Box 940  
 Cardiff, CA 92007

Chief Operating Officer  
 City of San Diego  
 City Administration Building  
 202 C St., 11th Floor  
 San Diego, CA 92101

15. **RECORDATION.** This agreement shall be recorded in the official records of the County of San Diego.

16. **LOCUS OF CONTRACT.** This agreement is entered into in the County of Alameda, California.

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000431


***PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))  
Los Peñasquitos Lagoon Sediment Basin***

**STATE COASTAL CONSERVANCY**

\_\_\_\_\_  
Samuel Schuchat  
Executive Officer

\_\_\_\_\_  
Date

**LOS PEÑASQUITOS FOUNDATION**

  
\_\_\_\_\_  
Joan Jackson  
Board Chair,  
Los Peñasquitos Lagoon Foundation

5-30-08  
\_\_\_\_\_  
Date

**CITY OF SAN DIEGO**

\_\_\_\_\_  
JERRY SANDERS,  
Mayor, City of San Diego

\_\_\_\_\_  
Date

**[ADD ACKNOWLEDGMENTS]**

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***PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))***  
***Los Penasquitos Lagoon Sediment Basin***

**EXHIBIT A**

**The Property**

Legal Description: The project is within the Torrey Pines Community Planning Area and is designated as Open Space and Industrial Park. The project site is legally described as Section 32, Township 14 South, Range 3 West, San Bernardino Principal Meridian, on the Del Mar California USGS 7.5 minute quadrangle map.

APN #'s: 340-160-07, 340-160-08, 340-160-09, 341-120-07, 340-100-53, and 310-050-14.

## **LOS PEÑASQUITOS LAGOON SEDIMENT BASIN MONITORING & MAINTENANCE PLAN**

### **I. Project Background & Problem Statement**

#### **A. Background.**

Part of the Torrey Pines State Reserve in northern San Diego County, the Los Peñasquitos Lagoon (LPL) is a 1.6 km<sup>2</sup> coastal lagoon that receives freshwater drainage from a 255 km<sup>2</sup> watershed comprised of three major canyons (Carroll Canyon, Los Peñasquitos Canyon, and Carmel Canyon). Both the lagoon and its watershed are part of the Los Peñasquitos Lagoon Hydrological Unit (hydro. unit 906.100) and are located within the San Diego Watershed Unified Watershed Assessment (UWA) Category 1, Catalog # 18070304. Given the status of "Preserve" by State Parks, LPL is one of the remaining native salt marsh lagoons in California, providing and home to several endangered species (e.g. Least Bell's Vireo, Belding's Savannah Sparrow, Light Footed Clapper Rail, Salt Marsh Daisy). LPL also serves as a stopover for the Pacific Flyway, offering migratory birds a safe place to rest and feed during their journeys, as well as providing refuge for coastal marine species that use the lagoon feed and hide from predators. Listed as a Critical Coastal Area, LPL is the closest lagoon to the only two Areas of Special Biological Significance located within San Diego: the San Diego Marine Life Refuge and the San Diego-La Jolla Ecological Reserve. LPL is currently under consideration for National Estuarine Research Reserve status under NOAA, as well as a Wetland of International Significance under the United Nation's Ramsar Program.

#### **B. Problem Statement.**

Industrial development and urban encroachment in the watershed and along the periphery of the lagoon has altered the hydrology of the western portion of the watershed and upset the geomorphic equilibrium of the three main tributaries (Carroll, Los Peñasquitos and Carmel Creeks) that empty into the lagoon, resulting in rapid sedimentation in the lagoon/watershed interface and within lagoon channels. Impacts associated with such rapid sedimentation include: reduced tidal mixing within lagoon channels, degradation and (in some cases) net loss of riparian and salt marsh vegetation, increased vulnerability to flooding for surrounding urban and industrial developments, turbidity associated with siltation in lagoon channels, and constriction of a main wildlife corridor. The Los Peñasquitos Lagoon Enhancement Plan and Program (LPLEPP), San Diego Basin Plan and 2002 Clean Water Act Section 303(d) highlight sedimentation as a significant impact associated with urban encroachment and a leading cause in the rapid destruction of salt marsh habitat in LPL, making sediment reduction a management priority.

#### **C. Project Description.**

The Los Peñasquitos Sediment Basin Project (Project) entails (a) construction of a sediment basin to protect LPL from rapid sedimentation, (b) establishment of an education/outreach program related to basin/lagoon/watershed awareness, and (c) establishment of a monitoring/permitting/maintenance protocol to assess the basin's performance for the duration of the grant agreement. Los Peñasquitos Lagoon Foundation (LPLF) prepared the Project in conjunction with the State Department of Parks and Recreation, the State Coastal Conservancy, and the City of San Diego. The LPLF was awarded partial funding for the project from the State Water Resources Control Board (SWRCB Nonpoint Source Pollution Control Grant Agreement No. 06-136-559-0) and the

State Coastal Conservancy. The Project furthers a comprehensive watershed approach by coordinating stakeholder efforts in reducing impacts to downstream habitats from sediment generated by non-point sources within the watershed.

Three studies were conducted before the basin was designed.

- (1) A Systems Analyses Report updated the characterization of LPL's habitats and systems, such as tidal channel hydraulics, and to account for the changes that have occurred in the past 20 years.
- (2) A Sediment Study analyzed sediment discharge from the watershed using standard, widely accepted models (i.e. Hydrologic: HEC-1; Hydraulic: HEC-2/HECRAS; Sediment Transport: FLUVIAL-12/HEC-6) to characterize sediment transport into the lagoon from the three main tributaries for 2-year, 5-year, 10-year and 100-year storm events.
- (3) An Alternatives Designs Report utilized the information provided in the Systems Analyses Report and Sediment Study to select sediment management alternatives for each tributary.

Based upon these studies, it was determined that constructing a basin to intercept sediment from Los Peñasquitos Creek would be the best alternative for protecting LPL's multiple beneficial uses since this tributary transports more than twice the sediment volume of the other two creeks combined. A project site was selected and a basin custom-designed specifically to maximize sediment interception while minimizing impacts to surrounding habitat and protecting nearby developments from flooding, as well as preserving view corridors of nearby residents. Establishment and initial implementation of the monitoring/maintenance programs is expected to be complete prior to September 1, 2008 in compliance with the SWRCB Grant Agreement; LPLF and the City of San Diego will coordinate on continued implementation in the long-term.

#### **D. Project Goals.**

1. To protect LPL from impacts associated with rapid sedimentation from non-point sources in the western portion of the watershed.
2. To contribute to the development of a TMDL target for sedimentation/siltation at LPL currently being established by the SWRCB.

#### **E. Objectives and Outcomes.**

- 1A. To intercept a portion of bed-load sediment from Los Peñasquitos Creek during moderate storm events (i.e. up to a 5-year event).
- 1B. To reduce annual rates of sediment input to LPL from Los Peñasquitos Creek.
- 2A. To establish an accurate TMDL that will be effective in reducing overall sediment/siltation input into LPL.

## **II. Los Peñasquitos Lagoon Sediment Basin Monitoring, Permitting, & Maintenance Plan**

### **A. Background.**

This plan is intended to outline basin monitoring, permit acquisition, and maintenance activities to be undertaken by LPLF and the City of San Diego and will remain in effect for as long as LPLF obtains permitting to allow for City maintenance activities. Monitoring activities include determination of vegetation, trash and/or debris accumulation within the basin area, surveys of accumulated sediment in the basin and inspections of basin structures. Maintenance activities include removal of debris, including but not limited to accumulated sediment, from the basin and proper disposal of that debris, vegetation management, and structural repairs as needed. LPLF will maintain and renew all permits needed for basin maintenance activities. Additional requirements added to existing permits will be approved by both LPLF and the City before they are added to the maintenance program. A Storm Water Pollution Prevention Plan (SWPPP) and a Notice of Inspection (NOI) will be prepared for the maintenance and inspection program by LPLF in coordination with the City of San Diego prior to maintenance activities. LPLF and the City of San Diego will maintain copies of the SWPPP and NOI.

### **B. Monitoring (to be conducted by the LPLF).**

LPLF will conduct the following activities related to monitoring the Sediment Basin:

#### **B.1. Surveys of Sediment in the Basin**

##### **B.1.1. Methodology**

- Surveys of sediment within the basin will be conducted by LPLF.
  - Profile elevations within the basin will be determined using established markings on the basin's outlet riser and associated benchmarks to be selected after the basin is constructed relative to the elevation of a permanent local benchmark.
  - The survey instrument (e.g., a Sokia Set-5A total station) will have an accuracy of several millimeters horizontally and vertically.
  - A hand-held electronic field workbook data logger (e.g., a Sokia SDR-33 electronic field data logger) will be used to calculate and record the relative coordinates and elevations.
  - The survey instrument and hand-held data logger will be moved to multiple pre-determined locations to complete a given survey.
  - Vegetation, trash and debris accumulation within the basin area will also be monitored.

### B.1.2. Schedule

- Surveys of the sediment within the basin will be conducted
  - Before and after the rainy season (i.e. December – April) to assess sediment accumulation during this period as well as annually.
    - Pre-rainy season surveys will be conducted between September and November to establish a baseline of sediment accumulation in the basin prior to the rainy season.
    - Post-rainy season surveys will be conducted between May and June to account for final sediment accumulations during the rainy season.
  - After every significant rain event (i.e. 2-5 year event or greater) for a period of three years or as required by permit conditions, to assess sediment accumulation rates associated with moderate storm events in order to facilitate future maintenance activities
- Monitoring of vegetation, trash and debris accumulation within the basin area will coincide with survey efforts or conducted separately if determined by LPLF to be necessary.

### B.1.3. Reporting

- All survey data will be recorded on a Field Data Sheet, including dates and volumes of sediment removed.
  - Field Data Sheets will be included in both Quarterly, when monitoring occurs, and Annual Survey Reports.
- Survey results will be compiled in quarterly and annual reports by LPLF.
  - Quarterly Survey Reports will be maintained by LPLF for the life of the project (i.e. until 2031) and submitted to the RWQCB and SWRCB on April 2008 and July 2008 as required by Agreement #06-136-559-0. Quarterly Reports will be submitted to the City of San Diego Street Division to facilitate and guide their maintenance activities of the basin. Furthermore, Quarterly Reports will be made available to interested parties and/or agencies upon request and will include:
    - a summary of surveys conducted that quarter
    - sediment survey field data sheets for surveys conducted that quarter
    - sediment depth and volume at each survey conducted that quarter
    - results and recommendations from surveys conducted that quarter
    - flow rates from the upstream USGS gauge during that quarter (or other established upstream flow gauge if available)
    - an estimate of sediment load intercepted from Los Peñasquitos Creek
    - rainfall data
    - a discussion of whether past recommendations have been carried out

- a cumulative tracking table(s) for the above information
  - a comprehensive description of maintenance activities performed that quarter, if any
- o Annual reports will be maintained by LPLF and provided to the City of San Diego and other stakeholders (e.g. SWRCB, Coastal Conservancy) upon request. Annual reports will include:
  - an annual accounting of the sediment survey activity and results
  - an annual assessment of the effectiveness of the basin in intercepting portions of bed-load sediment from Los Peñasquitos Creek
  - an annual accounting of maintenance activities performed during the year
  - sediment survey field data sheets for surveys conducted that year

### **C. Inspection of Basin Structures (to be conducted or overseen by LPLF).**

LPLF will conduct or cause to be conducted, the following activities related to inspection of the Sediment Basin structure:

#### **C.1. Methodology**

- LPLF will be responsible for inspecting the sediment basin for
  - o integrity of the outlet riser
  - o obstruction of the outlet structure that can create standing water and impede hydraulic capacity
  - o damage or erosion to the outlet embankment
  - o erosion or slope failure along drainage paths from the upstream hillside
  - o presence of trash or debris

#### **C.2. Schedule**

- The basin will be inspected
  - o prior to annual maintenance efforts performed before the rainy season.
    - LPLF will coordinate inspections with basin monitoring efforts when possible.
    - Pre-rainy season inspections will be conducted between September and November.
    - Post-rainy season surveys will be conducted between May and June.
  - o every 2 weeks during the rainy season (December – April), when access is permissible by City Parks and Recreation.
  - o after every significant storm event, when access is permissible by City Parks and Recreation
  - o at least every 24 hours during long-term storm events, when access is permissible by City Parks and Recreation

- after maintenance and repair activities to assure that required maintenance and/or repairs were performed successfully.

### **C.3. Reporting**

- Inspection results will be compiled in annual reports by LPLF.
  - A Registered Professional Engineer will prepare a certified inspection report for the sediment basin once each year. These regular inspection reports will be on file with the Los Peñasquitos Lagoon Foundation and forwarded to the City's Street Division for review and guidance for future maintenance activities.
  - The certified annual inspection report will contain a statement that no maintenance work was needed OR a list of maintenance activities or repairs that will be required.
  - If repairs are required, the Street Division of the City of San Diego will be notified and will perform repairs, as City funding allows, according to the schedule provided under "Basin Maintenance", provided that emergency maintenance or higher priorities do not exist within the City.
    - A follow-up report will certify that repairs have been completed.
    - If repairs have not been performed, LPLF will notify the City of San Diego Street Division of the required repairs.
    - in the event that the City cannot justifiably repair the basin due to emergency and/or priorities within the City, Street Division will subcontract repair of the basin to LPLF for a sum not to exceed the City's estimated repair cost.

### **D. Permitting and Notification (to be conducted by LPLF).**

LPLF will manage and maintain any and all (Federal, State, and local) permits required for the regular maintenance of the basin. The City will make itself available for discussions with regulatory agencies concerning permit conditions and ongoing obligations for basin maintenance. Furthermore, with approval from Development Services Department, the City will offer in-kind services for any work performed by City staff with regard to permit review, processing and authorization. The City of San Diego Park and Recreation Department as the property owner should authorize permits for submission.

### **E. Basin Maintenance (to be conducted by the City).**

The City of San Diego will conduct the following maintenance activities with respect to the Sediment basin:

**E.1. Projected Costs.** Street Division's annual maintenance cost is estimated to be \$274,550. City (Park and Recreation Department) staff will seek and support dedicated funding for basin maintenance from the City Council.

**E.2. Notification.** When the LPLF's survey and/or inspection teams determine that basin maintenance and/or repairs are needed, the Foundation will notify the ranger's office at the City of San Diego's Los Peñasquitos Canyon Preserve of the pending maintenance and/or



repair activity and accessibility to the basin area. The City of San Diego's Street Division, which will perform the required maintenance and/or repairs to basin structures, will also be notified and will act accordingly to the following maintenance and/or repair activities provided that emergency maintenance or higher priorities do not exist within the City and City funding allows.

- **E.3. Description.** Ongoing maintenance at the sediment basin may include both scheduled and unscheduled maintenance activities. Scheduled maintenance will occur annually and consist of vegetation removal when annual sediment accumulation is minimal or standard maintenance to remove sediment from the basin. Emergency maintenance will occur in response to significant storm events that can deposit large amounts of sediment and debris in the basin over a relatively short period of time. Repairs to the basin will occur as needed. Basin maintenance and/or repairs will be performed by the City's Street Division, provided that emergency maintenance, or higher priorities do not exist within the City and City funding allows. In the event that the City cannot justifiably maintain the basin due to emergency maintenance needs and/or priorities within the City, Street Division will subcontract maintenance of the basin to LPLF for a sum not to exceed the City's estimated maintenance cost.

- **E.3.1 Vegetation Removal (Scheduled Maintenance)**

- **TRIGGER:** Vegetation removal will occur when LPLF survey and/or inspection teams determine and informs the City that vegetation removal activities are needed to prevent vegetation from becoming established in the basin area and to insure performance and/or structural integrity of the basin.
- **RESPONSE:** LPLF will coordinate vegetation removal with City Parks and Recreation staff.
- **NOTIFICATION:** LPLF will coordinate vegetation removal efforts with City Parks and Recreation staff.
- **SCHEDULE:** Annual removal of vegetation may occur at the beginning of each winter season (i.e. after September 16<sup>th</sup> and before November 15<sup>th</sup>), even if the sediment depth has not reached the designated level for sediment removal.
- **ACCESS:** Refer to E.4 *Access for Basin Maintenance and Repairs*.
- **ACTIVITIES:** Vegetation will be removed from the basin area by City Parks and Recreation to prevent establishment. City Parks and Recreation will clean the basin and outlet structure of trash and debris as needed to prevent standing water and to maintain hydraulic capacity. The brow ditch will be maintained by Streets Division as City funding allows and provided that emergency maintenance or higher priorities do not exist within the City..
- **DISPOSAL:** Refer to E.5 *Disposal of Basin Spoils*.

- **E.3.2 Standard Maintenance (Scheduled Maintenance)**

- **TRIGGER:** Standard maintenance will occur when LPLF survey and/or inspection teams determine and informs the City of San Diego Street

Division in writing that standard maintenance activities are needed to insure performance and/or structural integrity of the basin.

- Sediment should be removed when it reaches a maximum depth of three (3) feet, as indicated by markings on the outlet riser.
  - **RESPONSE:** Street Division will respond to notification by LPLF of standard maintenance needs (i.e. removal of sediment, debris and trash) within approximately eight weeks provided that emergency maintenance or higher priorities do not exist within the City and City funding allows. Prior to each maintenance effort, LPLF and the City Parks and Recreation will determine whether the spoils will be sent to the nearest landfill for disposal or if a beneficial use (e.g. used for fill) of the spoils is available. If it is determined that all spoils will be sent to the landfill, then Streets Division will remove both vegetation and sediment from the basin area, since vegetation will not need to be separated from the sediment. If it is determined that the spoils will need separation for beneficial uses, then City Park and Recreation Department will remove vegetation prior to Street Division removing sediment, debris and trash.
  - **NOTIFICATION:** City of San Diego Street Division will notify and provide a schedule to LPLF two weeks prior to planned maintenance activities so LPLF can coordinate monitoring and inspection activities, as well as notify City Parks and Recreation staff.
  - **SCHEDULE:** Annual removal of vegetation and sediment should occur at the beginning of each winter season and after September 16th.
  - **ACCESS:** Refer to E.4 *Access for Basin Maintenance and Repairs*.
  - **ACTIVITIES:** The basin and outlet structure will be cleaned of trash and debris as needed to prevent standing water and to maintain hydraulic capacity and the brow ditch will be maintained as needed provided that City funding allows and emergency maintenance or higher priorities do not exist within the City.
  - **DISPOSAL:** Refer to E.5 *Disposal of Basin Spoils*.
- **E.3.3. Emergency Maintenance (Unscheduled Maintenance).**
- **TRIGGER:** Unscheduled maintenance will occur when the LPLF survey and/or inspection teams determine and has written concurrence from the City of San Diego Street Division that maintenance activities must occur immediately to insure performance and/or structural integrity of the basin.
  - **RESPONSE:** Streets Division will respond to notification by LPLF of emergency maintenance needs (i.e. removal of sediment, debris and trash) within a week provided that other emergency maintenance or higher priorities do not exist within the City and City funding allows.
  - **NOTIFICATION:** City of San Diego Street Division will notify and provide a schedule LPLF prior to their maintenance activities so LPLF can coordinate monitoring and inspection activities, as well as notify City Parks and Recreation staff.
  - **SCHEDULE:** As needed.
  - **ACCESS:** Refer to E.4 *Access for Basin Maintenance and Repairs*.

- **ACTIVITIES:** Includes removal of trash, debris and sediment by Street Division after major storm events, potential repairs made necessary by storms and floods and maintenance of the brow ditch as needed provided that City funding allows and emergency maintenance or higher priorities do not exist within the City.
- **DISPOSAL:** Refer to E.5 *Disposal of Basin Spoils*.

• **E.4. Access for Basin Maintenance and Repairs**

- LPLF will notify the City of San Diego's Park Ranger for Los Peñasquitos Canyon Preserve prior to any maintenance or repair activities.
- All agreements and/or permits required for maintenance vehicles and activities will be provided by the LPLF.
- An access ramp will be constructed by LPLF to the basin floor for maintenance vehicles.
- Maintenance vehicles should enter the existing park access road at the existing locked gate on Vista Sorrento Parkway.

**E.5. Disposal of Basin Spoils**

- The City of San Diego's Street Division will be responsible for the removal and disposal of all spoils taken from the basin site contingent upon available funding. Spoils include, but are not limited to: sediment, vegetation, trash and debris.
  - During standard maintenance, spoils will be staged onsite for dewatering purposes provided that a suitable location can be designated.
    - Street Division will coordinate with LPLF and City Parks and Recreation to select a site located away from drainage courses.
  - During emergency maintenance activities spoils will be staged onsite for dewatering purposes with properly implemented BMP's, unless Street Division, LPLF or City Parks and Recreation identify an appropriate offsite location. The offsite location must be approved by Street Division.
    - If spoils cannot be staged onsite, Street Division will remove spoils from the basin area and stage them offsite for dewatering purposes.
  - Street Division will implement the necessary BMP's and run off control measures at all spoil storage areas to prevent the spoils from re-entering the basin or entering and impacting nearby areas including, but not limited to: waterways, storm drains and/or sensitive habitats.
  - After dewatering, all spoils will be removed from the staging area as required by applicable permits.
    - Spoils that cannot be used for beneficial uses (e.g. fill dirt) will be trucked to the landfill for disposal.

**Compliance with the Basin Monitoring & Maintenance Plan**

The parties agree and acknowledge that either of them, or the California Coastal Conservancy, may enforce the requirements of the Los Peñasquitos Lagoon Sediment Basin Monitoring & Maintenance Plan in the event a party fails to meet its Plan obligations, by pursuing any appropriate legal remedy through Agreement 31116(c).

**LOS PEÑASQUITOS FOUNDATION**

Joan Jackson  
[Authorized signature]

Date  
5-30/08

Joan Jackson  
[Print or type name]

Chairperson  
[Title]

**CITY OF SAN DIEGO**

\_\_\_\_\_  
[Authorized signature]

Date

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[Print or type name]

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[Title]